

**Contract #:** 238647

**Entry Date:** 3/26/2024 12:35:07 PM

WYOMING ATTORNEY  
GENERAL'S OFFICE

APR 09 2024

Madison Barber  
APPROVED AS TO FORM

**Department:** Wyoming Department of Transportation,  
Contracts & Policy

**Agency Contact:** Hopkin, Josh

**Phone:** 3077773817

**Other Agency Contact:**

**Client Comments:** Please include original signature pages, thank you!

**Contractor/Vendor Name:** City of Lander

**Contract Title:** Fuel Points City of Lander

**Contract Type:** General Services - State  
Funds

**Contract Amount:** 50.0000

**Contract Effective Date:**

**Contract Expiration Date:** 6/11/2034 12:00:00 AM

**Status:** AG Approved as to Form

**RETURN VIA:** Ink Signature - Inter-agency Mail

**Assigned Attorney:** Madison Barber

**CONTRACT BETWEEN THE  
WYOMING DEPARTMENT OF TRANSPORTATION AND THE  
CITY OF LANDER**

1. **Parties.** The parties to this Contract are the Wyoming Department of Transportation (WYDOT), whose address is: 5300 Bishop Boulevard, Cheyenne, Wyoming 82009, and the City of Lander (User), whose address is: 240 Lincoln Street, Lander, Wyoming 82520.
2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the User shall abide in its use of WYDOT's fuel system.
3. **Term of Contract.** This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is ten (10) years from the Effective Date. All services shall be completed during this term.
4. **Payment.**
  - A. The User agrees to pay WYDOT for the services described in Section 5 below. WYDOT will issue billing invoices monthly. Monthly invoices shall contain the total amount due for diesel and/or unleaded fuel dispensed during the month and any applicable one-time PROKEE system activation key (key) charges.
  - B. The User agrees to pay the established WYDOT standard fuel cost plus the current Overhead Cost. The Overhead Cost is a rate built into WYDOT's accounting system for overhead expenditures for administering the fuel system. The current rate is effective until September 30, 2024, at which time the rate is subject to change. The rate will be charged on the standard cost of fuel obtained by the User as a per-gallon fee.
  - C. The User agrees to pay a non-refundable five dollar (\$5.00) fee for each key.
5. **Responsibilities of User.** The User agrees to:
  - A. Pay WYDOT in accordance with Section 4 above.
  - B. Provide WYDOT with a list of User vehicles and/or equipment that the User wishes to have access to WYDOT's system. The list will be updated by the User as needed. This list will contain only the following information for each vehicle or piece of machinery:
    - (i) License Plate Number;
    - (ii) Description;
    - (iii) Fleet Number (agreed upon by WYDOT and User); and
    - (iv) Fuel Type.

- C. Provide WYDOT with a list of drivers whom the User wishes to grant access to WYDOT's system. This list will be updated by the User when needed. The list will contain only the following information for each driver:
  - (i) Full name; and
  - (ii) Employee Identification Number (needed to access the automated fuel system).
- D. Accept all charges made at fuel sites for keys and drivers, until such time as the User notifies WYDOT of any change in status.
- E. Acknowledge that the keys assigned to the User are not transferrable from one vehicle/machine to another vehicle/machine nor are the keys transferable to another entity. The User acknowledges that a vehicle/machine transferred to or from another agency will require the recoding of the key by WYDOT. The User shall be responsible for all charges on keys not returned to WYDOT in cases of transferring, even if the vehicle/machine is under another agency's authority.
- F. Acknowledge that authorized User drivers remain authorized until de-authorized by User in writing to WYDOT.
- G. Acknowledge that WYDOT reserves the right to terminate any key or individual driver for reasons that include but are not limited to:
  - (i) Lack of proper documentation at a manual site;
  - (ii) No documentation at a manual site;
  - (iii) Misuse of fuel site; or
  - (iv) No activity within five (5) or more years.
- H. If a key is lost or damaged, it is the User's responsibility to contact WYDOT with the key number and vehicle information. User will be responsible for all key charges until User informs WYDOT that the key has been lost or stolen and WYDOT has deactivated the key.
- I. If the fuel site is a manual fuel site, the User shall complete a manual fuel log.
- J. Maintain the asphalt surface and approach on the User's property leading to the fuel system.

6. **Responsibilities of WYDOT.** WYDOT agrees to:

- A. Invoice the User in accordance with Section 4 above.
- B. Allow User access to WYDOT's automated and manual fueling locations during all hours of the day in order to purchase unleaded or diesel fuel for User's vehicles/machinery.

- C. Provide User with a key for each vehicle or machine. Each key will have a non-refundable charge of five dollars (\$5.00).
- D. Update authorizations in driver and vehicle files within twenty-four (24) hours of receipt of written notification, except for large requests. Large requests shall be updated within a reasonable amount of time.

7. **General Provisions.**

- A. **Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed by all parties to this Contract.
- B. **Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. **Audit and Access to Records.** WYDOT and its representatives shall have access to any books, documents, papers, electronic data, and records of the User which are pertinent to this Contract.
- D. **Compliance with Laws.** The User shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- E. **Entirety of Contract.** This Contract, consisting of seven (7) pages, represents the entire and integrated Contract between the parties and shall supersede all prior negotiations, representations, and agreements, whether written or oral.
- F. **Ethics.** User shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing User’s profession.
- G. **Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by WYDOT and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Contract or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Contract.
- H. **Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and

without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.

- I. **Indemnification.** Each party to this Contract shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend, or indemnify the other.
  
- J. **Independent Contractor.** The User shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Contract, the User shall be free from control or direction over the details of the performance of services under this Contract. The User shall assume sole responsibility for any debts or liabilities that may be incurred by the User in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the User or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or WYDOT or to incur any obligation of any kind on behalf of the State of Wyoming or WYDOT. The User agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the User or the User's agents or employees as a result of this Contract.
  
- K. **Nondiscrimination.** The User shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.
  
- L. **Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract.
  
- M. **Insurance Requirements.** The User is protected by the Wyoming Governmental Claims Act, Wyo. Stat. § 1-39-101, *et seq.*, and certifies that it is a member of the Wyoming Association of Risk Management (WARM) pool or the Local Government Liability Pool (LGLP), Wyo. Stat. § 1-42-201, *et seq.*, and shall provide a letter verifying its participation in the WARM or LGLP to WYDOT.

- N. Publicity.** Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the User, shall identify WYDOT as the sponsoring agency and shall not be released without prior written approval from WYDOT.
- O. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- P. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and WYDOT expressly reserve sovereign immunity by entering into this Contract and the User expressly reserves governmental immunity. Each of them specifically retains all immunities and defenses available to them as sovereign or governmental entities pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all other applicable law. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to immunity shall be construed in favor of immunity.
- Q. Taxes.** The User shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- R. Termination of Contract.** This Contract may be terminated, without cause, by WYDOT upon thirty (30) days written notice. This Contract may be terminated by WYDOT immediately for cause if the User fails to perform in accordance with the terms of this Contract.
- S. Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.
- T. Time is of the Essence.** Time is of the essence in all provisions of this Contract.
- U. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.

- V. **Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- W. **Counterparts.** This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Contract. Delivery by the User of an originally signed counterpart of this Contract by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to WYDOT.

**THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.**

8. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

**WYDOT:**

Wyoming Department of Transportation

\_\_\_\_\_  
Dennis Byrne, Chief Financial Officer

\_\_\_\_\_  
Date

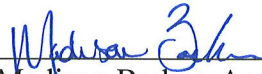
**USER:**

City of Lander

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

**ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM**

 # 2381647  
\_\_\_\_\_  
Madison Barber, Assistant Attorney General  
Date contract prepared: 4/8/2024

\_\_\_\_\_  
4/9/24  
Date